[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 21, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on replacement parts for self-propelled bituminous paving equipment from Canada (59 FR 59993). The review period is September 1, 1990 through August 31, 1991. This review involves one manufacturer/exporter of this merchandise, the Allatt Paving Division of Ingersoll-Rand Canada Inc. (Allatt). After considering the comments submitted by petitioner and respondent, we determine the dumping margin for this period to be 6.86 percent.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1994, the Department published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on replacement parts for self-propelled bituminous paving equipment from Canada (59 FR 59993) covering the period September 1, 1990 through August 31, 1991. This review involves one manufacturer/exporter of this merchandise, Allatt. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, Blaw-Knox, and from the Road Machinery Division of Ingersoll-Rand, which is the successor to the respondent.

Comment 1: The petitioner claims that the Department improperly made adjustments to foreign market value (FMV) for pre-sale home market movement costs through a circumstance-of-sale adjustment and the exporter's sales price (ESP) offset. Petitioner maintains that these adjustments are prohibited by the decision of the Court of Appeals for the Federal Circuit (the Federal Circuit) in *Ad Hoc Committee of AD–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Fed. Cir. 1994).

Respondent maintains that Ingersoll-Rand did not claim pre-sale home market movement charges, and therefore that the issue is moot. (*See* Supplemental Questionnaire Response dated December 2, 1993, Section B–1 Format Sheets, p. 2).

Department's Response: We agree with the respondent. No pre-sale home market movement charges were claimed and the Department did not make any adjustment to FMV for these expenses.

Comment 2: The respondent argues that the Department incorrectly adjusted the United States price (USP) to account for certain home market taxes. The respondent maintains that the Department's current methodology is the result of the decision of the Court of International Trade (CIT) in *Federal-Mogul Corp.* v. *United States,* Slip Op. 93–194 (CIT 1993) (*Federal-Mogul*), in which the court ordered the Department to adjust USP by the *ad valorem* tax rate at the same point in the chain of commerce at which the tax is imposed in the home market. Thus, the respondent claims that the first step of the Department's current tax methodology, as mandated in *Federal-Mogul,* is to increase USP by applying the home market tax rate to the price of U.S. sales at the point at which the product would be taxed in the home market. According to the respondent, the second step of the Department's tax methodology involves making an additional deduction to USP and FMV by multiplying each adjustment by the *ad valorem* tax rate. The respondent disagrees with the second step of the Department's methodology because it believes that the second round of adjustments does not conform with the requirement that the Department calculate accurate margins. Furthermore, even if these second step adjustments are warranted, the respondent maintains that the Department has not applied the stated methodology correctly.

According to the respondent, the Department states in its preliminary results that the second step of the tax methodology is made to avoid creating dumping margins where they would not exist if no taxes were imposed, in accordance with *Silicomanganese From Venezuela* (59 FR 31205) and *Zenith Electronics Corp.* v. *United States,* 988F.2d 1573 (Fed. Cir. 1993) (*Zenith*). The respondent argues that the Department has misinterpreted the holding of the *Zenith* opinion. The respondent claims that the *Zenith* decision does not require the Department to make specific adjustments to avoid margin creation resulting from the multiplier effect. Furthermore, the respondent argues that the Department's current tax methodology actually increases dumping margins, which is in conflict with the Department's duty to calculate accurate margins. Despite the CIT's decision upholding the Department's current tax methodology (*see Independent Radionic Workers of America* v. *United States,* 862 F. Supp. 422, 426 (CIT 1994); *see also Torrington Co.* v. *United States,* 866 F. Supp. 1434, 1436 (CIT 1994)), the respondent claims that the statute does not authorize the second step to the Department's tax methodology and that this methodology has not yet been reviewed by the Federal Circuit.

In addition, the respondent argues that even if the Department's tax methodology is valid under the law, the Department did not correctly apply it in the preliminary results of this case. The respondent maintains that the second step tax adjustment is made to eliminate any residual tax that would have been included in the ultimate USP or FMV as a result of movement costs that were included in the tax base but were later deducted in deriving the ultimate comparison price. *See Silicomanganese from Venezuela* (59 FR 31205). The respondent claims that in the preliminary results the Department incorrectly made tax adjustments for all price adjustments, including other price adjustments that were not deductions.

Specifically, the respondent argues that the Department made a tax

adjustment to both PP and ESP sales for the difference-in-merchandise adjustment (difmer), which is incorrect because the difmer is an independent statutory adjustment made to FMV to account for differences in physical characteristics when a product sold in the United States does not have an exact match with a product sold in the home market. *See* 19 U.S.C. § 1677b(a)(4)(C); 19 CFR 353.57. According to the respondent, because the difmer is not an adjustment for differences in circumstances of sale, pursuant to 19 U.S.C. § 1677(a)(4)(B), it should not affect the tax added to USP or FMV. The respondent claims that the Department's tax adjustment for the difmer is in conflict with the directive established in *Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200 (CIT 1991) (*Daewoo*), in which it is stated that tax adjustments are appropriate only to account for differences in the circumstances of sale. Thus, the respondent claims, by making this inappropriate adjustment to the difmer, the Department has increased the FMV unnecessarily, and thereby increased any dumping margins in comparisons where the difmer was a positive number.

Furthermore, the respondent does not agree with tax adjustments that the Department made to FMV corresponding to adjustments that were added to derive FMV. The respondent claims that tax adjustments made for additions to FMV are in conflict with the Department's stated policy of making tax adjustments only for costs which are deducted from the USP on which the tax was calculated. Moreover, the respondent argues that after the Department makes its tax adjustments corresponding to deductions, USP and FMV no longer contain any residual tax resulting from costs that were a part of the original tax base. However, when the Department makes tax adjustments for costs that it adds to FMV, these costs result in creating margins that the initial adjustments were supposed to prevent. Thus, the respondent maintains, the Department should only make adjustments for costs that are deducted from the original tax base.

Department's Position: The tax methodology used in this administrative review is the Department's current administrative practice. *See Federal-Mogul.* In *Federal-Mogul*, the CIT rejected our revised implementation of the Act's instructions on taxes and prohibited us from applying a purely tax-neutral margin calculation methodology. Accordingly, the Department changed its practice, as instructed by the CIT, and adjusted USP for home market tax by multiplying the home market tax rate by the USP at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax, and have added the result to USP. In accordance with our tax methodology, we have also deducted from the USP and FMV those portions of the respective home market tax and the USP tax adjustments attributable to expenses included in the foreign market and U.S. bases of the tax if those expenses are later deducted to calculate FMV and USP. Specifically, we are deducting the *difference* between home market selling expenses and U.S. selling expenses, whether they are added to or deducted from FMV. Furthermore, all adjustments to U.S. price are required to be multiplied by the tax rate, including the difmer. These adjustments to the foreign market tax and the U.S. price tax adjustment are necessary to prevent the methodology for calculating the U.S. price tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

The adjustment to avoid the margin creation effect is in accordance with the Federal Circuit's holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Tariff Act should not create a dumping margin if pre-tax FMV does not exceed USP. *See Zenith.* In addition, the Federal Circuit specifically has held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *See Daewoo.* However, the mechanics of the Department's adjustments to the U.S. and foreign market tax amounts as described above are not identical to those suggested in *Daewoo.* With regard to the respondent's concern that this methodology expands the margins, the Federal Circuit in *Zenith* held that ''[b]y engaging in dumping, the exporters themselves are responsible for the multiplier effect. The multiplier effect does not create a dumping margin where one does not already exist.'' *See Zenith* at 1581–82. For the foregoing reasons, we have not amended our treatment of U.S. and home market taxes for these final results.

Comment 3: The respondent argues that in calculating the FMV for ESP sales, the program was incorrect in that the U.S. packing costs were multiplied by the absolute amount of tax rather than multiplied by the tax rate. In addition, the respondent claims that when the Department recalculated the U.S. credit expense for ESP and PP sales, the Department applied the credit rate to the unit price, without first subtracting discounts. Thus, the respondent maintains that corrections should be made to the FMV calculation for ESP sales and to the U.S. credit expenses.

Department's Position: We agree with the respondent. We have corrected our calculations for these inadvertent errors.

Comment 4: The respondent maintains that there were two different tax rates in Canada during the review period: the FST, which was a value-added tax that was included in the price of the subject merchandise until December 31, 1990, and the GST, a goods and services tax levied after January 1, 1991, which is not included in the price charged to the customer. The respondent argues that in *Federal-Mogul Corp.* v. *United States*, Slip Op. 94–186, 8–9 (CIT, Dec. 7, 1994), the CIT determined that such home market taxes should only be applied to the part of the review period in which the tax was in effect. The respondent argues that to prevent the tax rate change from distorting the dumping margin, the Department should use the tax rate that would be applied to the U.S. sale in comparisons where the tax rates differ because the sale in one market occurred in 1990 and the sale in the other market occurred in 1991.

Department's Position: We agree that the home market tax rate should be adjusted to account for the differences in tax rates during 1990 and 1991; however, we disagree with respondent's proposal to use the tax rate that would be applied to the U.S. sale in comparisons where the tax rates differ. To account for the differences in the tax rates during the two periods, the Department instead derived a weighted-average tax rate for the period of review based on the volume of home market sales made during 1990 and 1991. In our calculations for these final results, we have used the home market weighted-average tax rate specific to the period of review for all comparisons of home market and U.S. sales.

Final Results of Review

We determine the following dumping margin to exist for the period September 1, 1990 through August 31, 1991:

Manufacturer/exporter	Margin (percent)
Allatt (Ingersoll-Rand)	6.86

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries.

Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate as listed; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) cash deposits for all other manufacturers or exporters will be 20.12 percent. This is the ''new shipper'' rate established during the first final results published by the Department in the Federal Register on February 16, 1982 (47 FR 6681). We have determined that this rate is the appropriate rate, because we are unable to ascertain the ''all others'' rate from the Treasury less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 7, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–9274 Filed 4–13–95; 8:45 am]

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[C–201–003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On November 10, 1994, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on ceramic tile from Mexico (59 FR 56057) for the period January 1, 1992 through December 31, 1992. We have now completed this review and determine the total bounty or grant to be zero or *de minimis* for 32 companies, and 2.08 percent *ad valorem* for all other companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.* We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1994, the Department published in the Federal Register (59 FR 56057) the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20012; May 10, 1982). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On December 12, 1994, a case brief was submitted by Ceramica Regiomontana, S.A., a producer of the subject merchandise which exported ceramic tile to the United States during the review period (respondent).

The review period is January 1, 1992, through December 31, 1992. This review involves 33 companies and the following programs:

(1) BANCOMEXT Financing for Exporters;
(2) The Program for Temporary Importation of Products used in the Production of Exports (PITEX);
(3) Other BANCOMEXT preferential financing;
(4) Other Dollar-Denominated Financing Programs;
(5) Fiscal Promotion Certificates (CEPROFI);
(6) Import duty reductions and exemptions;
(7) State tax incentives;
(8) Article 15 Loans;
(9) NAFINSA FONEI-type financing; and
(10) NAFINSA FOGAIN-type financing.

In accordance with the recent Court of International Trade (CIT) decision in *Ceramica Regiomontana, S.A. et al.* v. *United States,* Slip Op. 94–74, the Department is changing the rate of 2.55 percent *ad valorem* preliminarily assigned to Ceramica Regiomontana to the country-wide rate of 2.08 percent *ad valorem*.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000, and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the total bounty or grant on a country-wide basis by first calculating the bounty or grant for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Mexican exports to the United States of the